

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11212 of 2014

Subodh Singh Son of Late Shakal Singh Resident of Village - Bishunpur Kamdeo,
P.S. Mejarganj, District Sitamarhi.

.... Petitioner/s

Versus

1. Ram Nigah Singh Son of Late Gorakh Singh Resident of Village - Bishunpur Kamdeo, P.S. Mejarganj, District Sitamarhi.
2. Ram Naresh Singh @ Bachchu Singh son of late Shakal Singh.
3. Baliram Singh son of late Kashi Singh.
4. Surendra Singh son of late Bhola Singh.
5. Anil Kumar Singh son of late Bhola Singh Respondents No. 1 to 5 are resident of village Bishunpur Kamdeo, P.S. Mejarganj, District Sitamarhi.
6. Santi Devi D/o Bhola Singh, W/o Vishwanath Singh resident of Vill. + P.O. Gisara, P.S. Parsauni, Dist. Sitamarhi.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Hans Lal Kumar, Adv.

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-08-2016

Heard Mr. Thakur, learned counsel for the petitioner.

Questioning the legal sustainability of the impugned order passed by the appellate court affirming the dismissal of the petition under Order 9 Rule 13 C.P.C. by the trial court, the present application under Article 227 of the Constitution of India has been filed by the defendant in the suit.

Learned counsel for the petitioner has submitted that both the courts below have adopted too technical approach after embarking

upon hair splitting scrutiny of the depositions and other evidence adduced on behalf of the parties. It has been also argued that the suit property involves a homestead land and therefore the chance should be given to the petitioner to contest the suit.

After considering the submissions and the perusal of the impugned order passed by the appellate court below as well as the order passed by the trial court, it is apparent that the title suit was filed in the year 2003 and was decreed ex parte against the present petitioner. It also transpires that the present petitioner was debarred from filing written statement by order dated 04.08.2008 in the suit. The trial court after considering the evidence adduced on behalf of the parties concluded that the petitioner had failed to establish sufficient cause explaining his absence in the suit. In appeal by the petitioner, the appellate court below, on reappraisal of the evidence adduced on behalf of the parties, has concurred with the findings of fact recorded by the trial court and has affirmed the conclusion that the petitioner has failed to establish sufficient cause for his non-appearance in the suit. The submission on behalf of the petitioner that the chance should be given to him as the suit property involved the homestead land is clearly misconceived as this Court exercising its jurisdiction under Article 227 of the Constitution of India cannot proceed to reappraise the evidence for interdicting the concurrent findings of fact as

recorded by both the courts below on the basis of evidence which are acceptable and could have relied.

Ex consequenti, this Court does not find any merit in this application, which is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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